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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

Case No. 21-4734-HSG

AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

19 Plaintiffs,

20 || v.

21 DEB HAALAND, Secretary of Interior,
22 SHAWN BENGE, Deputy Director,
23 National Park Service, and
CRAIG KENKEL, Superintendent,
Point Reyes National Seashore,

Defendants

INTRODUCTION

2 1. Plaintiffs challenge the National Park Service's failure to revise the 1980 General
3 Management Plan for the Tomales Point portion of the Point Reyes National Seashore, where
4 approximately 293 Tule elk live confined behind an eight-foot-high fence that was erected
5 decades ago to prevent the elk from competing for forage and water with the cattle who are
6 permitted by the Park Service to graze on the park land outside the fence. For many years now,
7 due to climate change and other factors, the drought conditions in this area have become
8 extremely dire, and, as a consequence, the elk—who were re-introduced in this area and are
9 required by law to be protected—have been unable to obtain access to sufficient food and water to
10 survive and are dying by the dozens of dehydration and/or starvation. Last year, approximately
11 152 more elk—more than a third of the total Tomales Point elk population of 445—died. During
12 the previous drought, 183 elk died in 2013 and another 71 elk died in 2014.

13 2. As a result of the Park Service's failure to revise the General Management Plan for
14 this portion of the National Seashore, this precious natural resource—one that millions of visitors
15 come to the Point Reyes National Seashore to observe and enjoy—is dying a slow and horrific
16 death that could be prevented.

17 3. The Park Service’s failure to revise this critical management plan violates the
18 agency’s statutory duty to do so and constitutes agency action unlawfully withheld and
19 unreasonably delayed within the meaning of the Administrative Procedure Act (“APA”), 5 U.S.C.
20 § 706(1).

21 4. For all of these reasons, and because the Tule elk are continuing to die horrific and
22 preventable deaths in Tomales Point, Plaintiffs seek declaratory and injunctive relief in the
23 interest of protecting these magnificent animals and the public's interest in continuing to
24 observe, enjoy, study, and photograph them for many generations to come.

JURISDICTION

26 5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and
27 2201 (2018).

PARTIES

Plaintiffs

6. Plaintiff Jack Gescheidt, a resident of California since 1996, has been visiting Tomales Point in the Point Reyes National Seashore on a regular basis for at least twenty years and would like to continue to do so. He hikes and runs in Tomales Park and goes there on trips with his friends. He very much enjoys viewing the wildlife, particularly the Tule elk, who live there. He also enjoys photographing the Tule elk at Tomales Point. He has strong recreational, aesthetic, and photographic interests in the Tule elk at Tomales Point and in ensuring their protection and survival.

7. The National Park Service's failure to revise the 1980 General Management Plan for this portion of the Seashore injures Mr. Gescheidt's interests because the Park Service is failing to manage the elk in a way that ensures their protection and survival. Consequently, these animals are dying horrific, inhumane, and painful deaths. As a result of Defendants' unlawful actions, Mr. Gescheidt has personally seen an elk at Tomales Point who was dying of either starvation or dehydration—an experience that causes him great anguish and aesthetic injury. In an effort to aid the elk, Mr. Gescheidt has tried to bring them supplemental water so that they will not continue to die such horrific deaths, but the Park Service confiscated the water and refused to let him, and others, bring water to the elk.

8. Defendants' unlawful actions as described herein are depriving Mr. Gescheidt of the ability to enjoy Tomales Point in the manner in which he has been accustomed to in the past, causing him much emotional and aesthetic injury. He is now faced with the untenable decision to either continue visiting this area and risk seeing dead or dying elk or refrain from visiting this part of the park that he so loves.

9. Mr. Gescheidt's injuries will be redressed if Plaintiffs prevail in this action because it will mean that the Park Service will have to revise the 1980 General Management Plan with respect to Tomales Point and figure out how to manage the elk in a *humane* way that does not result in this wildlife continuing to die horrific and painful deaths from starvation and dehydration. Should Plaintiffs prevail in this action, Mr. Gescheidt will again be able to visit his

1 beloved Tomales Point and the elk who live there without seeing them, or being confronted with
2 the possibility of seeing them, in such inhumane conditions.

3 10. Plaintiff Laura Chariton, also a resident of California, has been visiting the Point
4 Reyes National Seashore since 1974 and would like to continue to do so. She uses Tomales Point
5 for recreational, educational, and aesthetic enjoyment, and she very much enjoys observing the
6 Tule elk who live there. She so loves Tomales Point that she and her husband celebrate important
7 events in their lives there, including her birthday, which she has celebrated in the park with
8 friends for many years. She loves the Tule elk and loves observing them in their natural state. She
9 is so enamored of the elk that for many years she served as a Tule elk docent on behalf of the
10 National Park Service, teaching visitors about the biology, ecosystems, and lives of the Tomales
11 Point elk. Unfortunately, because she loves this area and the elk who live there, Ms. Chariton has
12 also recently personally observed elk who were emaciated and dying from a lack of food and
13 water – a sight that haunts her every single day.

14 11. The National Park Service's failure to revise the 1980 General Management Plan
15 for this portion of the Seashore injures Ms. Chariton's aesthetic and recreational interests because
16 the Park Service is failing to manage the elk in a way that ensures their protection and survival,
17 and its decisions therefore mean that the elk will continue to suffer horrible deaths from starvation
18 and dehydration. To avoid these injuries, Ms. Chariton is faced with the untenable decision to
19 either forgo visiting her beloved Tomales Point or continue to go there and be subjected to the
20 horrific scene of elk either dying or dead from a lack of food and water because they cannot get
21 past the fence that the Park Service maintains on the southern border of their habitat.

22 12. Ms. Chariton's injuries will be redressed if Plaintiffs prevail in this action because
23 it will mean that the Park Service will have to revise the 1980 General Management Plan with
24 respect to Tomales Point and devise measures for managing the Tule elk in a *humane* way that
25 does not result in the elk continuing to die horrific and painful deaths from starvation and
26 dehydration. Thus, Ms. Chariton will again be able to visit Tomales Point and the elk who live
27 there without fear of seeing them in such inhumane conditions.

1 13. Plaintiff Skyler Thomas is a resident of California. He is a wildlife photographer
 2 and videographer. He has been visiting the Point Reyes National Seashore, and specifically
 3 Tomales Point, on a regular basis since 2016, and he would like to continue to do so. He enjoys
 4 hiking there and taking photographs and videos of the wildlife, particularly the Tule elk. He is
 5 spiritually inspired by inspired by Tomales Point and has fallen in love with this beautiful place
 6 and the elk who live there. Unfortunately, because he so frequently visits the area, he has also
 7 recently been confronted with the sight of elk dead from a lack of water and forage. Through no
 8 effort of his own to see such carnage, he has already personally seen as many as fifteen emaciated
 9 dead elk—an experience that horrifies him and a sight that he cannot get out of his mind. Because
 10 of this situation, he is now faced with the deplorable choice of either refraining from visiting this
 11 area that he loves so much to avoid again seeing dead or dying elk or continuing to go there only
 12 to be confronted with these horrible scenes.

13 14. Mr. Thomas' aesthetic, recreational, and photographic injuries are being greatly
 14 impaired by the Park Service's unlawful actions as described herein because the Park Service is
 15 failing to manage Tomales Point and the elk who live there in a way that does not cause them such
 16 suffering.

17 15. Mr. Thomas' injuries will be redressed if Plaintiffs prevail in this action because
 18 this will mean that the Park Service will have to revise the 1980 General Management Plan with
 19 respect to Tomales Point and figure out how to manage the Tule elk in a *humane* way that does
 20 not result in the elk continuing to die horrific and painful deaths from starvation and dehydration,
 21 and Mr. Thomas will again be able to visit Tomales Point and the elk who live there without the
 22 fear of seeing them in such inhumane conditions.

23 16. Plaintiff Animal Legal Defense Fund ("ALDF") is a national nonprofit animal
 24 protection organization founded in 1979 and headquartered in Cotati, California. ALDF uses
 25 education, public outreach, legislation, and litigation to protect the lives and advance the interests
 26 of animals, including the Tule elk who live in Tomales Point at Point Reyes National Seashore.
 27 ALDF has more than 300,000 members and supporters nationwide, including members who
 28 reside in Marin County, California. Since 2018, ALDF has advocated for sound management of

1 the Tule elk. The organization and its members and supporters have provided public comment on
 2 numerous issues related to captive elk within the Point Reyes National Seashore, and in 2020,
 3 ALDF members and supporters urged the National Park Service to provide food and water to the
 4 captive Tule elk at Tomales Point.

5 17. ALDF members, supporters, and staff derive substantial recreational, aesthetic, and
 6 conservation benefits and enjoyment from visiting Tomales Point and observing the Tule elk who
 7 live there, and they would like to continue to engage in all of these activities. However, their
 8 aesthetic and recreational interests in enjoying this part of the National Seashore, and especially
 9 the Tule elk, are greatly impaired by Defendants' unlawful actions as described herein, because
 10 those actions are causing Tule elk at Tomales Point to live in inhumane conditions and to die of
 11 starvation and dehydration because they cannot obtain access to adequate food and water.

12 18. These injuries to ALDF members, staff, and supporters will be redressed if
 13 Plaintiffs prevail in this action because this will mean that the Park Service will have to revise the
 14 1980 General Management Plan with respect to Tomales Point and take other measures to manage
 15 the Tule elk in a *humane* way that does not result in the elk continuing to die horrific and painful
 16 deaths from starvation and dehydration. This will allow ALDF's members, supporters, and staff to
 17 continue enjoying Tomales Point and the elk who live there without having to see, or contemplate
 18 seeing, elk dying or dead from a lack of water or food caused by their inability to get beyond the
 19 fence maintained by the Park Service on the southern border of their habitat.

20 **Defendants**

21 19. Defendant Deb Haaland is the Secretary of the Interior. She has ultimate authority
 22 to administer the laws at issue in this case and is therefore responsible for the challenged actions.

23 20. Defendant Shawn Benge is the Deputy Director of the National Park Service.
 24 Accordingly, he is responsible for the administration of Point Reyes Seashore and is therefore
 25 responsible for Defendants' unlawful actions that form the basis of Plaintiffs' claims.

26 21. Defendant Craig Kenkel is the Superintendent of the Point Reyes National
 27 Seashore and responsible for ensuring that the Park Service's management of activities there

1 complies with applicable laws. He is therefore also responsible for the violations of law cited
 2 herein.

3 **FACTUAL AND LEGAL BACKGROUND**

4 **A. The Park Service Organic Act**

5 22. Congress established the National Park Service in 1916 to “promote and regulate
 6 the use of the Federal areas known as national parks, monuments, and reservations . . . by such
 7 means and measures as conform to the fundamental purpose . . . to conserve the scenery and the
 8 natural and historic objects and the wildlife therein and to provide for the enjoyment of the same
 9 in such manner such manner and by such means as will leave them unimpaired for the enjoyment
 10 of future generations.” National Park Service Organic Act, ch. 408, § 1, 39 Stat. 535 (1916)
 11 (current version at 54 U.S.C. § 100101(a) (2018)) (emphasis added).

12 23. As to its duty to leave the wildlife in national park units “unimpaired” for the
 13 enjoyment of future generations, the Park Service defines “impairment” as an impact that “would
 14 harm the integrity of park resources or values, including the opportunities that otherwise would be
 15 present for the enjoyment of those resources or values.” 2006 NPS Management Policies, § 1.4.5.

16 24. Even where resources and values are not at risk of impairment, the Park Service
 17 must fulfill the “fundamental purpose” of the National Park System, which is “to conserve park
 18 resources and values” and provide “for the enjoyment of park resources and values by the people
 19 of the United States.” 2006 NPS Management Policies § 1.4.3. When a conflict arises between
 20 “conserving resources and values and providing for enjoyment of them, conservation is to be
 21 predominant.” *Id.*

22 **B. Point Reyes National Seashore**

23 25. In 1962, Congress enacted legislation to create the Point Reyes National Seashore
 24 as part of the National Park System “to save and preserve, for purposes of public recreation,
 25 benefit, and inspiration, a portion of the diminishing seashore of the United States that remains
 26 undeveloped.” Act of September 13, 1962, Pub. L. No. 87-657, 76 Stat. 538 (1962) (codified at 16
 27 U.S.C. § 459c *et seq.* (2018)) (the “Point Reyes Seashore Act”).
 28

1 26. The Point Reyes Seashore Act authorized the Secretary of the Interior to acquire
 2 the lands, waters, and other property within the bounds of Point Reyes Peninsula in Marin County,
 3 California. The statute further provided that “the property acquired by the Secretary . . . shall be
 4 administered by the Secretary without impairment of its natural values, in a manner which
 5 provides for such recreational, educational, historic preservation, interpretation, and scientific
 6 research opportunities as are consistent with, based upon, and supportive of the maximum
 7 protection, restoration, and preservation of the natural environment within the area.”

8 27. On October 20, 1972, the Park Service officially established the Point Reyes
 9 Seashore. Point Reyes National Seashore, Calif., 37 Fed. Reg. 23,366 (Oct. 20, 1972).

10 28. This National Seashore is located on a coastal peninsula in Marin County,
 11 California, encompassing approximately 71,000 acres and 80 miles of coastline. It is surrounded
 12 by the Pacific Ocean on its north, west, and southwest sides and Tomales Bay on a portion of its
 13 east side, including Tomales Point. It contains stunning and diverse landscapes, including rolling
 14 grasslands, forests, sandy and rocky beaches, and coastal cliffs. Its natural resources are among
 15 the most geologically and ecologically diverse in the National Park System.

16 C. **Preservation of the Tule Elk**

17 29. Tule elk are majestic ungulates endemic to California. For centuries, they freely
 18 roamed the Point Reyes Peninsula until they were extirpated from the area by the mid-nineteenth
 19 century by uncontrolled hunting and removal from their natural habitat to accommodate private
 20 livestock ranching.

21 30. The elk are mixed grazers and browsers—i.e., they feed on both ground-level herbs
 22 and grasses and on woody shrubs and trees. Their life expectancy is approximately 8-12 years, but
 23 they can live much longer, and they give birth to their young between April – June.

24 31. In 1976, Congress declared that “the protection and maintenance of California’s
 25 Tule elk in a free and wild state is of educational, scientific, and esthetic value to the people of the
 26 United States” and therefore required the Secretary of the Interior to “develop a plan for the Tule
 27 elk restoration and conservation, including habitat management” and to make land under the
 28 jurisdiction of the Secretary “reasonably available for the preservation and grazing of Tule elk.”

1 16 U.S.C. §§ 673e, 673g (2018) (“the Tule Elk Statute”). Congress also designated more than
 2 33,000 acres encompassing forests, grasslands, beaches, and coastlines as wilderness and potential
 3 wilderness. *Id.*

4 32. In furtherance of these objectives, in 1978, the California Department of Fish and
 5 Wildlife took ten tule elk from an existing heard in the San Luis National Wildlife refuge and
 6 placed them in a small, 2600 acre preserve at the northern end of the Seashore called Tomales
 7 Point.

8 33. Although initially the reintroduced population of elk failed to thrive, the elk
 9 population increased dramatically after the existing cattle were removed from Tomales Point, and
 10 the comeback of the elk was heralded by the Park Service as a stunning wildlife reintroduction
 11 success.

12 34. Those elk dispersed, and today there are four herds of fenced-in Tule elk at
 13 Tomales Point (the North Herd, the Plateau Herd, the White Gulch Herd, and the South Herd).
 14 The Park Service manages two additional free-roaming herds in the Limantour and Drakes Beach
 15 areas of the Seashore.

16 **D. The 1980 General Management Plan**

17 35. In 1978, Congress also enacted legislation requiring the National Park Service to
 18 prepare and revise general management plans for the preservation and use of all national parks
 19 and other lands within its jurisdiction. National Parks and Recreation Act of 1978, Pub. L. 95-625,
 20 § 604(3), 92 Stat. 3518. Congress has since enacted legislation providing that such “[g]eneral
 21 management plans for the preservation and use of each System unit . . . shall be prepared and
 22 revised *in a timely manner* by the Director.” 54 U.S.C. § 100502 (2018) (emphasis added).

23 36. The statutory requirement that the Park Service revise all General Management
 24 Plans applies to all portions of the Point Reyes National Seashore.

25 37. A General Management Plan (“GMP”) “shall include,” *inter alia*, “measures for the
 26 preservation of the area’s resources.”

27 38. Park Service Management Policies explain that to comply with Congress’ directive
 28 that such plans be revised “*in a timely manner*,” such plans will be prepared and revised “to keep

1 them current,” and that, accordingly, the Park Service will review a GMP “every 10 to 15 years”
 2 or “sooner if conditions change significantly.” 2006 NPS Management Policies § 2.3.1.12.

3 39. In 1980, the Park Service issued a GMP for the National Seashore that established
 4 general management objectives and strategies for future management of the Seashore. The 1980
 5 GMP states that “[r]estoration of historical natural conditions (such as reestablishment of Tule
 6 elk) will continue to be implemented when such actions will not seriously diminish scenic and
 7 recreational values.”

8 40. In 1980, pursuant to a Memorandum of Agreement with the California Department
 9 of Fish and Game, the Park Service erected a three-mile long, eight-foot high woven-wire fence
 10 along the southern border of Tomales Point to separate the elk from 18,000 acres of Seashore
 11 lands south of the fence where the Park Service permitted livestock ranchers to graze their cattle.

12 **E. The 1998 Elk Management Plan**

13 41. In 1982, the Park Service issued an Interim Tule Elk Management Plan, pending
 14 completion of the final Management Plan required by the Tule Elk statute. The Interim Plan stated
 15 that the Park Service planned to “[r]e-establish a healthy, tule elk population on a range which has
 16 returned to a natural successional regime as if elk were always present.”

17 42. In 1998, the Park Service issued a final Tule Elk Management Plan. The purpose of
 18 the Plan was to “guide management, monitoring, and research of the tule elk.” The Park Service
 19 explained that the Plan was needed “to provide for the protection of the elk that is consistent with
 20 scientifically sound principles, takes into account the interests of the public, and meets the
 21 objectives for which the Seashore was established.”

22 43. In the 1998 Elk Management Plan, the Park Service observed that elk help reduce
 23 fires by eating grass and shrubs and have a positive impact on vegetation.

24 44. The Park Service further explained that because “Tule elk play an important role in
 25 the function of the Seashore ecosystem[,]” the Plan’s principal “mission” was to “[a]daptively
 26 manage elk as a natural component of the dynamic ecosystem of Point Reyes.” Toward that goal,
 27 a second “mission” of the Service was “[m]aintenance of the remaining genetic diversity . . . as an
 28 important objective for elk preservation.”

1 45. The Service's stated management "goals" therefore included maintaining "viable
 2 populations of tule elk at Point Reyes," noting that "[a] healthy herd is one that does not suffer
 3 disease or mortality due to artificially induced or human caused impacts."

4 46. The Service stated that another goal was to "[m]anage tule elk using minimal
 5 intrusion to regulate population size, where possible, as part of natural ecosystem processes."

6 47. The Service explained that if the Tule elk at Tomales Point "are to remain as part
 7 of the Seashore's fauna and ecological processes, they should eventually become free-ranging
 8 throughout most of the Seashore's natural zones where conditions allow," and hence another
 9 stated goal of the 1998 Management Plan was to "[p]rovide for a free-ranging elk herd by 2005."

10 48. When the 1998 Plan was issued by the Park Service, there were approximately 465
 11 elk in the Tomales Point herd. However, the Park Service was already concerned about the
 12 genetic viability of the Tule elk population at Tomales Point, explaining that it already had the
 13 "lowest level of genetic variation" of all the tule elk herds in the state. The agency acknowledged
 14 that if the population were reduced too much this could further impair genetic diversity and lead to
 15 inbreeding. To address this concern, the Park Service recommended the addition of 2-3 female elk
 16 every elk generation to maintain genetic variation within the population and further recommended
 17 that the first addition of new elk "should be made as soon as possible."

18 49. On information and belief, the Park Service has never brought in any new elk to
 19 Tomales Point since 1978.

20 50. The 1998 Plan explained that NPS "policy" is to "maintain wild populations [of
 21 elk] within natural habitats" and that "maintaining captive herds for the enjoyment of visitors"
 22 was anathema to this policy.

23 51. Noting that the total elk population at Point Reyes could grow to 1000 before
 24 carrying capacity was reached, the Service proposed an interim population of 350-450 elk at
 25 Tomales Point and stated that the agency would consider using immunocontraception to control
 26 the population should it begin to exceed that number. Indeed, the Park Service explained that the
 27 public was very much opposed to reducing the population by killing the elk by public hunting or
 28

agency sharpshooters and that “[t]he preferred technique to limit growth is immunocontraception, which allows treated individuals to breed after contraception is stopped.”

52. In the 1998 Plan, the Park Service also acknowledged that removing or opening the fence at Tomales Point would allow the existing elk herd to disperse and that any impairment to the elk habitat from cows could be reduced by installing elk gates or fence openings designed to allow passage of elk, but not cattle.

53. In the 1998 Plan, the Park Service also considered relocating the existing fence farther south to provide more useable habitat for the elk at Tomales Point.

54. The Park Service further acknowledged that it could reduce or eliminate ranching permits under its existing authorities and observed that removal of the fence that restricted the movement of the elk would be considered if the Service eliminated ranching on the adjacent lands.

55. When the 1998 Elk Management Plan was issued, the Park Service stated that it had decided to “maintain the elk fence at Tomales Point and continue to separate tule elk from cattle.” The Park Service further stated that it would “continue monitoring tule elk and their environment to analyze trends and better understand tule elk population dynamics and ecology at Point Reyes” and that “[t]he control of the Tomales Point elk population will be attempted through management techniques of contraception and relocation.”

56. By its own terms, the 1998 Elk Management Plan was to “guide the management, monitoring, and research of tule elk . . . at Point Reyes National Seashore for the next five to ten years,” or until 2008 at the latest.

57. On information and belief, the Park Service has not managed the Tomales Point elk population with contraception and/or relocation.

58. The Park Service has never updated or revised the Tule Elk Management Plan.

59. The 1998 Tule Elk Management Plan was not a revision to the General Management Plan for the National Seashore.

F. Additional Facts Giving Rise to Plaintiffs' Claim

1 60. The National Seashore is the only National Park System unit where Tule elk can be
 2 seen, and their presence at the National Seashore is treasured by visitors, photographers,
 3 naturalists, and locals alike. Their image has been expressed in the local folk art, as well as
 4 numerous local and nationally published photographs.

5 61. However, the Tomales Point fence prevents the Tule elk who live on the north side
 6 of the fence from roaming to other areas of the National Seashore to find food/forage and water.

7 62. During a drought in 2013-2015, roughly half of the Tomales Point Tule herd—
 8 approximately 257 of the 540 elk—died from the lack of adequate forage and water and the elks’
 9 inability to get past traverse the fence on the southern border of their range, yet not one dairy cow
 10 on the other side of the fence was reported to have died from lack of water or forage. At the time,
 11 the Park Service denied to the public that the elk fence and lack of water played any role in this
 12 massive die-off of elk.

13 63. In 2016, a coalition of environmental organizations brought a lawsuit challenging
 14 the Park Service’s failure to issue a new or revised General Management Plan for the Point Reyes
 15 Seashore. *Res. Renewal Inst. et al. v. Nat'l Park Serv. et al.*, No. C 16-0688 SBA, 2016 WL
 16 11673179 (N.D. Cal. July 15, 2016). The parties settled that lawsuit with the Park Service
 17 agreeing to issue an amendment to the 1980 General Management Plan that addressed and
 18 analyzed the environmental impacts of continuing to allow livestock grazing at the Seashore. The
 19 settlement agreement does not address the Tule elk who live at Tomales Point.

20 64. Meanwhile, during the summer of 2020, the public became extremely concerned
 21 that drought conditions were once again causing the Tule elk at Tomales Point to die from lack of
 22 forage and water because, again, the elk cannot obtain access to forage and water on the other side
 23 of the eight-foot-high fence on the southern boundary of Tomales Point. Members of the public,
 24 including Plaintiffs, began to see emaciated and dying elk at Tomales Point and urged the Park
 25 Service to take emergency measures to ensure that the elk were provided access to water.

26 65. Again, as during the 2013-2015 drought, the Park Service denied to the public that
 27 the elk were dying from a lack of water and insisted that there were adequate sources of water on
 28 the north side of the fence.

1 66. Members of the public, however, knew this was not true because they had evidence
 2 that many of those water sources had gone dry. Therefore, some individuals, including some of
 3 the Plaintiffs, began a concerted effort to bring water to the elk on their own by carrying troughs
 4 and large containers of bottled water to several locations on Tomales Point. However, the Park
 5 Service prohibited the public from doing so by confiscating and removing these sources of water
 6 and continued to insist to the public and the media that the elk at Tomales Point had adequate
 7 access to water.

8 67. On August 31, 2020, an environmental group sent a letter to the Park Service,
 9 requesting that it take all necessary actions to carry out its legal and moral responsibilities to
 10 ensure that the elk who live on the Tomales Point peninsula have access to sufficient water to
 11 prevent them from dying. It explained that if the Park Service refused to do so it would be in
 12 contravention of its statutory duties to “conserve” this legally protected wildlife as required by the
 13 NPS Organic Act.

14 68. The four elk herds at Tomales Point depend on particular stock ponds located there
 15 to survive. The August 31, 2020, letter to the Park Service included evidence from people
 16 monitoring the area, including photographs taken at the time, demonstrating that these ponds were
 17 seriously depleted as follows:

18 **The North Herd:** As to the two ponds normally available to the Elk, North Pond I was
 19 completely dry; North Pond II has some water but was way below capacity.

20 **The Plateau Herd:** As to the two ponds normally available to this herd, Central Pond I
 21 was completely dry, and Central Pond II was very close to dry.

22 **The White Gulch Herd:** There do not appear to be any ponds available to this herd
 23 and whether the seep normally used by this herd (that drains toward the Tomales Bay) was
 24 running was not ascertainable.

25 **The South Herd:** The two ponds normally used by this herd—South Pond I and South
 26 Pond II—were completely dry and had been for a while.

27 69. There is essentially no movement of individual elk from one herd crossing into the
 28 adjacent herd’s home range. Cobb, McCrea, *Spatial Ecology and Population Dynamics of tule*

1 *elk (Cervus elaphus nannodes) at Point Reyes National Seashore, California,*

2 <https://escholarship.org/uc/item/2wt3h3rc>.

3 70. In September 2020, pursuant to the settlement reached in the prior case, the Park
 4 Service issued a Proposed Amendment to the 1980 GMP for a portion of the National Seashore.
 5 However, the Park Service asserted that “[t]he fenced elk population on Tomales Point is outside
 6 the planning area” for that Amendment. In other words, the new Amendment to the GMP, now
 7 scheduled to be issued on or about September 13, 2021, does not address the environmental
 8 conditions of the portion of the Seashore where the Tomales elk are confined, the fact that these
 9 animals are dying of starvation and dehydration from a lack of forage and/or water, and any
 10 revised management measures to ensure that these animals do not continue to die because they
 11 cannot get access to adequate food and water.

12 71. The Park Service states on its website that the Tule elk at Tomales Point are not
 13 considered as part of its proposed Amendment to the General Management Plan.

14 72. Meanwhile, in the Spring of 2021, the Park Service acknowledged that
 15 approximately 152 more Tule elk died during 2020 due to the fact that the elk cannot go beyond
 16 the artificial fence for sustenance.

17 73. The only necropsies of elk that the Park Service has released to the public pursuant
 18 to the Freedom of Information Act demonstrate that in fact the elk died of starvation and/or
 19 dehydration. The necropsies show that the elk were completely emaciated when they died.

20 74. Although the Park Service never sent a formal response to the letter it received in
 21 August 2020 about this matter, the agency recently announced on its website that in response to
 22 requests by the public to do something about this situation it has decided that it will not remove
 23 any portion of the fence at Tomales Point to allow the elk access to more food and water.

24 75. The Park Service also recently announced that it will not provide the elk at
 25 Tomales Point any supplemental forage.

26 76. Because there is currently a drought in this area of California and there is expected
 27 to be less rain in 2021 than there was in 2020, more elk are dying and will continue to do so from
 28 a lack of forage and water.

1 77. In light of the fact that more elk will die this year, coupled with the fact that 152
 2 elk died last year, and 257 died during 2013-2015, there are serious concerns about whether the
 3 Park Service can maintain the genetic diversity of this elk population—identified as “an important
 4 objective for elk preservation” in the 1998 Elk Management Plan.

5 78. The Park Service recently admitted for the first time that the Tule elk at Tomales
 6 Point do not have sufficient access to water. Although the Park Service has begun to provide
 7 supplemental water to some of the elk, it has not provided water that can be accessed by all four
 8 herds of elk who live there, and, again, it is not providing *any* of the elk any supplemental forage,
 9 despite the fact that the Park Service has informed the public that the reason so many elk died last
 10 year is that they lack access to adequate forage.

11 79. Over the last year and continuing to the present, members of the public, including
 12 some of the Plaintiffs, have seen dying and dead elk at Tomales Point, due to the lack of water and
 13 forage.

14 80. The fence at Tomales Point was artificially erected and is maintained by the Park
 15 Service—i.e., it is not a *natural* boundary, and hence it is not a natural barrier to food and water
 16 for the elk.

17 81. The fence at Tomales Point is not mandated by statute, regulation, or any other
 18 law.

19 82. Since 1980 the Park Service has not issued a new or revised General Management
 20 Plan that addresses the environmental conditions at Tomales Point, the elk who live there, and
 21 management measures that would ensure that this wildlife does not continue to die from a lack of
 22 access to adequate water and forage.

23 83. The Park Service has not issued a new or revised Elk Management Plan for the
 24 Tule elk at Tomales Point since 1998.

25 84. The Park Service has not carried out its plan to use immunocontraception to restrict
 26 the growth of the Tule elk population at Tomales Point.

27 85. Death by starvation and/or lack of water is extremely painful and causes much
 28 suffering to the animal.

86. Allowing wildlife to die of starvation or dehydration because of a human-erected barrier to forage and water is inhumane.

PLAINTIFFS' CLAIM FOR RELIEF

Failure to Revise the 1980 General Management Plan for Tomales Point

87. Plaintiffs reallege and incorporate by reference paragraphs 1 through 86 as though fully alleged herein.

88. By failing to revise the 1980 General Management Plan for the Point Reyes National Seashore with respect to Tomales Point and the Tule elk who live there in a timely manner as required by the NPS Act, 54 U.S.C. § 100502, Defendants have violated that mandatory duty and unreasonably delayed carrying it out in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1).

89. The Park Service's failure to revise the General Management Plan with respect to Tomales Point and the Tule elk who live there has resulted in its failure to address the elk's dire need for access to the food and water they need to maintain a healthy population; therefore, the agency's delay in dealing with this issue is particularly unreasonable in light of the agency's overarching obligation under its Organic Act to "conserve" this wildlife "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" and the agency's specific obligation under the Point Reyes Seashore Act to administer this land "without impairment of its natural values."

90. The Park Service's failure to revise the General Management Plan with respect to Tomales Point and the Tule elk who live there has also resulted in its failure to address the continued genetic viability of the herd. Therefore, the agency's delay is particularly unreasonable in light of its overarching obligation to "conserve" this wildlife "in such manner and by such means as will leave them unimpaired for the enjoyment of future generations" and the agency's specific obligation under the Point Reyes Seashore Act to administer this land "without impairment of its natural values."

91. The Park Service's violations of law injure Plaintiffs in the manner described in ¶¶ 6-18 herein.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Declare that Defendants' failure to revise the 1980 General Management Plan with respect to Tomales Point and the Tule elk who live there constitutes agency action unlawfully withheld and unreasonably delayed in violation of the Administrative Procedure Act, 5 U.S.C. § 706(1);

2. Order Defendants to take immediate measures to comply with their statutory duties to revise the 1980 General Management Plan with respect to the Tomales Point portion of the Point Reyes National Seashore and the Tule elk who live there;

3. Preliminarily and permanently enjoin Defendants from continuing to deprive the Tule elk at Tomales Point of adequate food and water;

4. Award Plaintiffs their costs and attorneys' fees; and

5. Award Plaintiffs such other and further relief as the Court may deem just and proper.

Respectfully submitted,

/s/ _____
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